

Proposed Amendments Idaho Criminal Rule 33.3 and Idaho Court Administrative Rule 75
July 2017

The following rule amendments are recommended by the Idaho Supreme Court's Domestic Assault and Battery Evaluator Advisory Board.

Proposed Amendments to I.C.R. Rule 33.3-

Provide clarification and more detail to Scope and Content of Report. The Board revised the scope and content of the report section to enhance the information provided in the report and provide clarification on sections already listed.

Assessment tools utilized must be approved by the Board. The Board developed a list of assessment tools, including risk, personality and other assessment tools. These tools are commonly used tools that can be used by a variety of skill levels and range in cost (most with no fee and minimal training to use). Evaluators must use at least one risk assessment tool and one personality assessment tool in their evaluation. The Board will maintain this assessment tool list and keep it up-to-date.

Add section for Distribution of the Evaluation. Evaluations contain NCIC information protected by federal law; this information can only be released by the court not the evaluator. The Board added this section to provide clarity to evaluators on submitting the report to the court.

Add section for Conflict of Interest. Added language from I.C. § 18-918 regarding conflict of interest to address issues related to agencies or organizations doing the evaluations, as well as providing the counseling or other treatment recommended or court-ordered.

Failure to comply the rule. The rule was amended to provide that an evaluation may be forwarded to the Board for review of compliance with the rule.

Rule 33.3. Evaluation of Persons Guilty of Domestic Assault or Domestic Battery

Persons who plead guilty or are found guilty of domestic assault or domestic battery may be ordered to undergo an evaluation under Idaho Code § 18-918(7) by an evaluator approved by the Domestic Assault and Battery Evaluator Advisory Board.

(a) Scope of Report. The scope and content of the evaluator's report must be as follows:

- (1) *Identifying Information.* The report must contain the following identifying information about the defendant:
 - (A) name;
 - (B) address;
 - (C) date of birth;
 - (D) gender;
 - (E) education;
 - (~~D~~E) occupation;
 - (~~E~~G) current incident, including the county where the incident occurred, the original charge, convicted charge and case number;
 - (~~F~~H) marital status, current intimate partners, and prior marriages;
 - (~~G~~I) children, including the number of children, ages of the children and custodial relationships; and military service-; and
 - (~~H~~J) military service, including branch of service, unit designation, exposure to combat and type of discharge.
- (2) *Risk Assessment.* The report must include a risk assessment containing the following information:
 - (A) current and past violent behavior;
 - (B) exposure to violence of any type, including but not limited to physical, sexual or emotional violence in the past or present;
 - (C) threats of homicide, suicide, or violence;
 - (D) ideation of homicide, suicide, or violence;
 - (E) ~~weapons~~ access to weapons, participation in weapon related activities, past or present;
 - (F) obsession with or dependent on the victim (~~sociopathic~~ psychopathic and stalking traits);
 - (G) history of rage and impulsivity;
 - (H) history of sexual abuse (as perpetrator or victim);
 - (I) history of child abuse (as perpetrator or victim);
 - (J) access to the victim;
 - (K) Criminal History Record Information (CHRI) through a National Criminal History Background Check System from local law enforcement or any other authorized

individual or agency and CHRI from the state repository. Evaluators must follow local protocols for obtaining CHRI from authorized agencies;

- (L) cultural issues factors;
 - (M) history of domestic violence protection orders (civil and/or criminal);
 - (N) prior treatment for aggressive violence, sexual abuse, and/or child abuse as a perpetrator or victim; and
 - (O) danger of reoffending; and
 - (P) a listing of the assessment tools utilized in the evaluation together with the results. The use of at least one risk assessment tool approved by the Domestic Assault and Battery Evaluator Advisory Board is mandatory.
- (3) ~~Substance Abuse~~ Behavioral and Physical Health. The report must include the following information about substance use, mental health, and physical health:

Substance Use

- (A) present usage of drugs, alcohol or mind altering substances;
- (B) ~~prior treatment for drug abuse or addiction~~ history of use of drugs, alcohol or mind altering substances;
- (C) ~~involvement of substance use in the incident~~ prior treatment for drug abuse or addiction; and
- (D) ~~a substance abuse assessment.~~ family history of drugs, alcohol or mind altering substances;
- (E) involvement of drugs, alcohol or mind altering substances in incident;
- (F) if utilized, a listing of the screening and/or assessment tools related to substance use together with the results;

Mental Health

- (G) present mental health concerns, including any current diagnoses, prescriptions and treatment;
- (H) history of mental illness, including past diagnoses, prescriptions and treatment;
- (I) family history mental illness;
- (J) a listing of the assessment tools utilized in the evaluation together with the results. The use of at least one personality assessment tool approved by the Domestic Assault and Battery Evaluator Advisory Board is mandatory;

Physical Health

(K) present health concerns, including any current diagnoses, prescriptions and treatment;

(L) history of illness, brain trauma, and learning difficulties, including past diagnoses, prescriptions and treatment; and

(M) family history of illness.

(4) *Self-Assessment.* The report must include the defendant's self-assessment, including:

(A) description of current incident in person's own words including a description of what lead up to the incident, the incident, police notification and the arrest;

(B) person's acceptance of responsibility for incident;

(C) ~~remorse evidenced by person~~ person's current view of the victim and relationship with the victim;

(D) ~~person's own view of need for treatment~~ remorse evidenced by the person; and

(E) ~~person's willingness to get treatment-~~ person's own view of need for treatment; and

(F) person's willingness to get treatment.

~~(5) *Test Results.* If there has been any testing of the defendant for substance use or abuse, psychological disorders, I.Q., etc., the report must contain the results of that testing.~~

~~(6)~~ *Collateral Information.* The report must contain the following collateral information:

(A) police report including statements given by the defendant and victim;

(B) victim interview (If a victim interview cannot be completed, the evaluator will document attempts to contact the victim and provide an explanation for not interviewing the victim); and

(C) review of past treatment records; and

(D) any other additional information.

~~(7) *Personality or Character Assessment.* The report must contain information about any personality or character assessment conducted.~~

~~(86)~~ Behavioral Clinical Observations and Mental Status Cognitive Functioning. The report must contain the evaluator's statement of clinical observations of behavior and mental status cognitive functioning, including:

- (A) level of cooperativeness; and
- (B) ~~victim interview~~; and
- ~~(C)~~ general present ~~mental status~~ cognitive functioning.

~~(97)~~ Clinical Summary and Recommendation. The evaluator's recommendation must include:

- (A) a summary formulation that identifies the factors causing or contributing to the defendant's domestic violence that form the basis for the evaluator's opinion as to the treatment recommendation;
- (B) further assessment ~~opinions and if needed~~;
- (C) treatment recommendations;
- (D) providers available to treat;
- (E) cost of treatment (estimate); and
- (F) cost of alternate treatment resources available to defendant.

(b) Distribution of the Evaluation. The defendant must request that a copy of the completed evaluation be forwarded to the sentencing court. The evaluator will follow local protocols regarding how to submit the completed evaluation directly to the court. The court will seal a copy of the completed report in the file and will provide copies of the evaluation to the parties in the case. Evaluations contain Criminal History Record Information through a National Criminal History Background Check System protected by federal law. This information can only be released by the court not the evaluator.

(c) Conflict of Interest. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available.

~~(bd)~~ Non-Compliant Reports. If the evaluator submits an evaluation that is not in compliance with ~~subsection (a) this rule~~, the court may return the evaluation with instructions to prepare an evaluation in compliance with this Rule at no additional cost to the defendant. ~~In the event an evaluator fails to submit an evaluation in compliance with this Rule after such an instruction, the court~~ An evaluation may be forwarded the evaluation to the Board for review of compliance with this rule. The evaluation must be sent as a sealed confidential document along with a written request that the evaluator be removed from the roster for failure to comply with this Rule explanation of the evaluator's failure to comply. If the Board determines the evaluation fails to meet the requirements of this Rule, the evaluator may be removed from the roster.

Proposed Amendments to I.C.A.R. 75-

Increase requirement regarding specialized education and experience. The Board increased the number of hours from 20 hours to 30 hours of education or training required to apply to be an evaluator. The 30 hours must include an orientation. The Board intends to offer 10 hours of online orientation training to lessen the impact/cost on new evaluators. The Board hopes to enhance the skill level of new evaluators and provide them with information about the court process, assessment tools, reports, etc.

Increase Advisory Board Membership. The Board will increase from 6 members to 9 providing additional expertise to the Board. Members who may be added to the Board will be: domestic violence court judge, domestic violence court coordinator, domestic violence offender intervention program provider, current or past domestic assault and battery evaluator, or health care provider with experience in working with victims of domestic violence.

Idaho Court Administrative New Rule 75. Domestic Violence Evaluators; Advisory Board

(a) Evaluators. Evaluators of persons who plead guilty or are found guilty of domestic assault or domestic battery under Idaho Code Section 18-918 shall be approved and shall serve under the following provisions:

(1) Qualifications. An evaluator under Idaho Code Section 18-918(7)(a) shall have the following qualifications:

(A) Licensed physician, licensed psychologist, licensed master social worker, licensed social worker if approved prior to July 1, 2008, licensed professional counselor, licensed marriage and family therapist, licensed registered nurse, licensed nurse practitioner or physician's assistant under the laws of the state of Idaho; an evaluator may be licensed in the state of Idaho or any other state;

(B) ~~Twenty~~ Thirty (30) hours of specialized education or training in domestic violence within the previous two years ~~that meets the criteria set out in subsection (2), as evidenced by an attached certificate of completion or other supporting documentation including intimate partner violence and training or education in one or more of the following areas: violence in families; child abuse; anger management; risk factors for future dangerousness; risk factors for lethality; causes of violence; or drug and alcohol abuse.~~ At least four (4) hours must be in the area of intimate partner violence and no more than four (4) of the thirty (30) hours may be in the area of drug and alcohol abuse. The thirty (30) hours must also include an orientation course offered or approved by the Domestic Assault and Battery Evaluator Advisory Board and training in the utilization and interpretation of domestic violence assessment tools. ~~Up to ten fifteen (105)~~

hours of the thirty (30) hours may be satisfied through approved ~~participatory~~ online CEU programs. Ethics or supervisor training will not count toward the required thirty (30) hours of training. The thirty (30) hours shall be acquired by completing program(s) approved or sponsored by one of the associations as listed in section (a)(2)(B) or;

(C) One year experience after licensure in assessment or treatment of domestic violence related issues. The Domestic Assault and Battery Evaluator Advisory Board may request further consultation or training based upon the evaluator's experience;

(D) Approved by the Domestic Assault and Battery Evaluator Advisory Board and maintained on a roster by the Administrative Director of the Courts as persons eligible to conduct evaluations of persons guilty of domestic assault or domestic battery. In the event there is no evaluator approved within the judicial district, then the requirements of (B), (C), and (D) may be waived by the court; and

(E) The evaluator must, at his or her own expense, submit to a criminal history check as provided for in Rule 47, I.C.A.R. Further, the evaluator must sign an Indirect Access Agreement and any other confidentiality agreements required by the Idaho State Police to allow the evaluator access to criminal justice information as required by Rule 33.3(a)(2)(K), Idaho Criminal Rules.

(2) Continuing Education of Evaluators. Beginning the next July 1 after an evaluator has been approved by the Domestic Assault and Battery Evaluator Advisory Board, the evaluator must take at least sixteen (16) hours of specialized training in domestic violence, or related topics in courses approved by the Domestic Assault and Battery Evaluator Advisory Board, in each and every two (2) year period following the July 1 date. An evaluator must file proof of compliance with this requirement with the Administrative Director of the Courts by July first of the year the continuing education is due. Along with proof of compliance, an evaluator must also send proof of current licensing. The Domestic Assault and Battery Evaluator Advisory Board may request further consultation or training based upon the quality of the evaluations or assessments submitted to the court or continuing education obtained.

(A) The sixteen (16) hours of training required in this section shall be in one or more of the following areas: ~~(a) domestic intimate partner violence;~~ ~~(b) violence in families;~~ ~~(c) child abuse;~~ ~~(d) anger management;~~ ~~(e) risk factors for future dangerousness;~~ risk factors for lethality; ~~(f) psychiatric causes of violence;~~ or ~~(g) drug and alcohol abuse.~~ Ethics or supervisor training will not count toward the required sixteen (16) hours of training. No more than four (4) of the sixteen (16) required hours may be in the area of drug and alcohol abuse. Up to eight (8) of the sixteen (16) required hours may be satisfied through approved participatory online CEU programs.

(B) The sixteen (16) hours of required training in this section shall be acquired by completing a program approved or sponsored by one of the following associations or the national equivalent of any of these organizations: ~~(a)~~ Idaho Psychiatric Association; ~~(b)~~ ~~Idaho Psychologists~~ Psychological Association; ~~(c)~~ Idaho Nursing Association; ~~(d)~~ Idaho Association of Social Workers; ~~(e)~~ Idaho Counselors Association; ~~(f)~~ Idaho Council on Domestic Violence and Victim Assistance; ~~(g)~~ Idaho Coalition Against Sexual Assault and Domestic Violence, ~~or the national equivalent of any of these organizations~~; or ~~(h)~~ the Idaho Supreme Court.

(C) Any program that does not meet the criteria set out in both section (a)(2)(A) and section (a)(2)(B) may be submitted to the board for approval either prior to or after completion.

(3) ~~Appointment~~ Evaluator Approval. All evaluators under Idaho Code Section 18-918 must be approved by ~~order of~~ the Domestic Assault and Battery Evaluator Advisory Board. Any person desiring to be approved as an evaluator shall file an application for approval with the Administrative Director of the Courts indicating the qualifications of the applicant and the dates and content of relevant training courses attended. An evaluator approved by ~~order of~~ the Domestic Assault and Battery Evaluator Advisory Board may continue in service from one calendar year to the next unless otherwise ~~ordered~~ determined by the Domestic Assault and Battery Evaluator Advisory Board. The Administrative Director of the Courts shall maintain a statewide list of approved evaluators by the Domestic Assault and Battery Evaluator Advisory Board.

(b) Advisory Board.

(1) Members. There is hereby created a Domestic Assault and Battery Evaluator Advisory Board consisting of ~~six~~ nine (69) members with experience and training in domestic violence, ~~as follows~~ Membership shall consist of at least one member from subsections (A) and (B) and a combination of members from the following:

(A) A district judge or magistrate judge appointed by the Supreme Court for a term of two (2) years, who shall serve as chair_;

(B) The Administrative Director of the Courts, or his or her designee_;

(C) A social worker with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three~~ three (3) names by the Idaho State ~~Counselors~~ Social Work Licensing Board and/or other appropriate associations or entities_;

(D) A counselor with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three~~ three (3) names by the Idaho State Counselors Licensing Board and/or other appropriate associations or entities_;

(E) A psychologist appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three (3)~~ names by the Idaho State Board of Psychologist Examiners and/or appropriate association; ~~and~~

(F) ~~A psychiatrist appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the State Board of Medicine or appropriate association.~~ A judge presiding over a domestic violence court appointed by the Supreme Court for a term of two (2) years;

(G) A domestic violence court coordinator appointed by the Supreme Court for a term of two (2) years;

(H) A domestic violence offender intervention program provider appointed by the Supreme Court for a term of two (2) years, upon submission of names from the Idaho Council on Domestic Violence and Victim Assistance and/or other appropriate associations or entities;

(I) A current or past domestic assault and battery evaluator appointed by the Supreme Court for a term of two (2) years; or

(J) A health care provider with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of names from appropriate associations or entities.

(2) Powers of Advisory Board. The Domestic Assault and Battery Evaluator Advisory Board shall have the power to make the following recommendations to the Supreme Court:

(A) Recommend qualifications and continuing education of evaluators under subsection (a) of this rule.

(B) Review and recommend for ~~appointment~~ approval or rejection applications of persons to be evaluators under this rule.

(C) Recommend the required content and scope of reports of evaluators under ~~Idaho Criminal Rule~~ Rule 33.3, Idaho Criminal Rules.